II. REMARKS

Preliminary Remarks

Upon entry of this amendment, claims 1-21 are canceled and replaced by claims 22-42. Claims 22 and 39 are independent.

The applicants respectfully request consideration and allowance of the present application.

The applicants would like to bring to the attention of the examiner that the present application is a continuation of U.S. Patent Appl. No. 09/053,152 (hereinafter the '152 application). The applicants filed a response to the final official action, dated August 13, 2002, in the '152 application on February 13, 2003. The applicants also filed a Notice of Appeal on February 13, 2003. Subsequent to that date, the applicants have not received any communication from the examiner.

The applicants attempted to contact the examiner on several occasions to determine the status of the application. None of these attempts was successful. In view of the fact that no response was received from the applicants' response to the final rejection or the applicants' inquiries, the applicants filed the present application.

For the convenience of the United States Patent and Trademark Office, and to expedite the prosecution of this application, the applicants repeat their remarks regarding the patentability of the pending claims.

Patentability Remarks

Rejection under the judicially created doctrine of obviousness-type double patenting –

Claims 22-25, 30, 31, 33, 36-39, and 41-50 (now claims 22-42) were rejected under the judicially created doctrine of obviousness-type double patenting in view of claims 15, 16, 18-24, and 26-33 of co-pending application no. 08/786,937. The applicants submitted a terminal disclaimer on February 13, 2003. Therefore, this rejection is now rendered moot.

Rejection under 35 U.S.C. §103 –

Claims 22-25, 30-31, 33, 36-39, and 41-50 (now claims 22-42) were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Diedrich *et al.* (*Hum. Reprod.* **9(5)**, 788 – 791, 1994) in view of Felberbaum *et al.* (*Hum. Reprod.* **9(4)**, 13, 1994). The examiner asserted that Diedrich *et al.* teach a method of inducing ovarian stimulation in which a combination of exogenous gonadotrophins (HCG) and the LHRH antagonist Cetrorelix to

patients in amounts recited by the instant claims. While Diedrich *et al.* do not disclose a method of teaching infertility, the examiner cited Felberbaum *et al.* to overcome this deficiency. Felberbaum *et al.* according to the examiner, teach a method of treating tubal infertility by administering a combination of exogenous gonadotropins and Cetrorelix at doses that avoid premature LH surges. The examiner asserted that it would have been obvious at the time the invention was made to use the method taught by Diedrich *et al.* to treat infertility because Felberbaum *et al.* raise an expectation of success, and because both cited documents, allegedly, teach the administration of gonadotropin/Cetrorelix combination to a patient using the claimed method steps and dosages. The applicants respectfully traverse.

Diedrich *et al.* disclose neither a long protocol for *in vitro* fertilization with doses of Cetrorelix starting on cycle day 6 and continuing up to ovulation induction with HCG, nor a single or dual does of 1 to 10 mg and the prevention of negative effects of HCG during luteal phase. Diedrich *et al.* also fail to teach the combination of an LH-RH antagonist with antiestrogens, specifically the combination of Cetrorelix and Chlomiphene. The claimed treatment regimen of a single or dual dose of 1 to 10 mg Cetrorelix, or multiple dosages of 0.1 to 0.5 mg starting at cycle day 1 to day 10, wherein ovulation is induced between day 9 and day 20 of the menstrual cycle, is neither taught nor suggested by Diedrich *et al.* The dosages for suppressing LH surges disclosed in Diedrich *et al.* (3 mg) are substantially higher than is in the claimed invention (as low as 0.25 mg). Contrary to the claimed invention, Diedrich *et al.* teach a protocol in which natural FSH suppression cannot be assessed. The ability to discern dosages of an LH-RH antagonist sufficient to suppress endogenous LH while maintaining FSH secretion is required for the claimed invention. Thus, Diedrich *et al.* are not enabling for the present invention claimed in, for example, claim 22.

The applicants submit further that Diedrich *et al.* **unambiguously teach away** from the applicants claimed invention requiring, *inter alia*, that FSH secretion be maintained at a natural level. Specifically, at page 790 of the cited document, left hand column, third full paragraph, the authors state "the suppression of FSH under Cetrorelix was less pronounced..." Clearly, one of skill in the art would understand that by that statement Diedrich *et al.* were unable to maintain the FSH secretion at a natural level (notwithstanding that the statement also clearly supports a position that the cited document could not, as a matter of law, teach or suggest that applicants' claimed invention for the same reasoning, *i.e.*, that the authors were unable maintain the FSH secretion at a natural level).

Felberbaum *et al.* do not overcome the deficiencies of Diedrich *et al.* In Felberbaum *et al.*, Cetrorelix is administered on cycle day 7 in a dosage of 3 mg or 1 mg daily up to ovulation. Thus, the dosage regimens taught in Felberbaum *et al.* employ higher amounts of therapeutic compound over the period of treatment than in the claimed invention. A skilled artisan would not have been motivated by the teachings within the four square corners of the cited references to achieve the claimed invention, as the references do not suggest utilizing the dosages of compounds claimed in the regimen recited: Even if, *arguendo*, a skilled artisan would have sought to combine the teachings of the references, the sustained daily dosages of Cetrorelix set forth by the references would not have achieved the claimed method of treating fertility disorders.

The applicants respectfully submit that claims 22-42 are not unpatentable under 35 U.S.C. §103(a) over Diedrich *et al.* in view of Felberbaum *et al.* and respectfully request withdrawal of this rejection.

III. CONCLUSION

In view of the foregoing, the applicants believe that the claims are in form for allowance, and hereby respectfully solicit such action. If any point remains in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is strongly urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

PILLSBURY WINTHROP LLP

By: _____

Thomas A. Cawley, Jr., Ph.D.
Registration No.: 40,944
Direct Telephone No.: 703-905-2144

TAC\GP

P.O. Box – 10500
McLean, VA 22102

General Telephone No.: 703-905-2000
General Facsimile No.: 703-905-2500